

APPEAL NO. 041201
FILED JULY 2, 2004

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on April 26, 2004. The hearing officer decided that the appellant (claimant) did not sustain a compensable injury on _____, and did not have disability. The claimant appeals these determinations on sufficiency of the evidence grounds. The respondent (carrier) urges affirmance.

DECISION

Affirmed.

The claimant asserts that the hearing officer erred by excluding Claimant's Exhibit No. 3, page 1. To obtain a reversal of a judgment based upon the hearing officer's exclusion of evidence, an appellant must first show that the exclusion was an abuse of discretion, and that the error was reasonably calculated to cause and probably did cause the rendition of an improper judgment. Texas Workers' Compensation Commission Appeal No. 92241, decided July 24, 1992; *see also Hernandez v. Hernandez*, 611 S.W.2d 732 (Tex. Civ. App.-San Antonio 1981, no writ). Reversible error is not ordinarily shown in connection with rulings on questions of evidence unless the whole case turns on the particular evidence admitted or excluded Atlantic Mutual Insurance Company v. Middleman, 661 S.W.2d 182 (Tex. App.-San Antonio 1983, writ ref'd n.r.e.). Upon review of the record, we cannot conclude that the hearing officer's exclusion of Claimant's Exhibit No. 3, page 1 constituted reversible error.

The claimant also asserts that the hearing officer erred by allowing testimony from the carrier's expert medical witness. The claimant appears to argue that the identity of the witness was not timely exchanged as required by Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 142.13(c)(1)(D) (Rule 142.13(c)(1)(D)). The claimant did not raise this objection at the hearing below. Any error in the admission of the testimony was, therefore, waived and will not be addressed for the first time on appeal.

The hearing officer did not err in determining that the claimant did not sustain a compensable injury on _____, and did not have disability. The injury determination involved a question of fact for the hearing officer to resolve. The hearing officer is the sole judge of the weight and credibility of the evidence (Section 410.165(a)) and, as the trier of fact, resolves the conflicts and inconsistencies in the evidence, including the medical evidence (Texas Employers Insurance Association v. Campos, 666 S.W.2d 286 (Tex. App.-Houston [14th Dist.] 1984, no writ)). In view of the evidence, we cannot conclude that the hearing officer's injury determination is so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986). Because the

claimant did not sustain a compensable injury, the hearing officer properly concluded that the claimant did not have disability. Section 401.011(16).

The decision and order of the hearing officer is affirmed.

The true corporate name of the insurance carrier is **TRAVELERS INDEMNITY COMPANY** and the name and address of its registered agent for service of process is

**CT CORPORATION
350 NORTH ST. PAUL STREET
DALLAS, TEXAS 75201.**

Edward Vilano
Appeals Judge

CONCUR:

Daniel R. Barry
Appeals Judge

Chris Cowan
Appeals Judge